



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0682]

RIN 1625-AA00

Safety Zone; North Hero-Grand Isle Bridge, Lake Champlain, VT.

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the effective period of the temporary safety zone for the navigable waters within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT. This rule extends the effective period of the existing safety zone for an additional two years. The safety zone will now end on September 1, 2024. When enforced, this regulation will continue to prohibit entry of vessels or persons into the safety zone unless authorized by Captain of the Port for Sector Northern New England or a designated representative. The safety zone is necessary to protect personnel, vessels, and marine environment from potential hazards created by the demolition, subsequent removal, and replacement of the North Hero-Grand Isle Bridge.

DATES: This rule is effective from September 2, 2022, through September 1, 2024.

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0682 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments. **FOR**

FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Marine Science Technician Zachary Wetzel, Waterways Management Division, Sector Northern New England, U.S. Coast Guard, telephone 207-347-5003, email Zachary.R.Wetzel@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Northern New England
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TIR	Temporary Interim Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On October 9, 2018, the Coast Guard published a temporary interim rule (TIR) establishing a safety zone on the navigable waters within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT for the North Hero-Grand Isle Bridge replacement project (83 FR 50503). We received no comments on the published TIR. No public meeting was requested and none was held. Construction on the North Hero-Grand Isle Bridge began in October 2018.

The Coast Guard originally published this rule to be effective, and enforceable, through September 1, 2022, but is extending it to September 1, 2024, to complete all remaining contract operations in and over Lake Champlain, including, but not limited to steel erection, concrete bridge deck placements, installations of navigation lighting, and removal of the original North Hero-Grand Isle Bridge. This rule extends the effective period of the safety zone for two years until September 1, 2024, due to delays of the North Hero-Grand Isle Bridge replacement project.

The Captain of the Port Sector Northern New England (COTP) has determined that the potential hazards associated with the bridge replacement project will be a safety concern for anyone within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the project is completed prior to September 1, 2024, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners, Local Notice to Mariners, or both.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must extend the effective period of the safety zone as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the

project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the North Hero-Grand Island Bridge for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish to delay effectiveness because we must protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with this bridge construction, and removal project that has already commenced, and will continue through September 1, 2024, will be a safety concern for anyone within the work zone. The construction and removal of the bridge continues to be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned along the length of the bridge. In order to mitigate the inherent risks involved with the removal of a bridge, and installation of the new bridge, it is necessary to control vessel movement through the area. The purpose of this TIR is to ensure the safety of the waterway users, the public, and construction workers for the duration of the new bridge construction and demolition. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any expeditious passage.

No vessel may stop, moor, anchor, or loiter within the safety zone at any time unless they are working on the bridge construction operations. The rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the bridge construction project.

IV. Discussion of the Rule

This rule extends the effective period of the temporary interim rule for the navigable waters of Lake Champlain, VT, surrounding the North Hero-Grand Isle bridge for two additional years until September 1, 2024. There are no other changes to the regulatory text of this rule as cited in 33 CFR §165.T01-0682. This rule will continue to prohibit all persons and vessel traffic from the safety zone unless exceptions are authorized by the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following reasons: 1) The safety zone only impacts a small designated area of Lake Champlain, 2) the safety zone will only be enforced when work equipment is present in the navigable channel as a result of bridge removal and replacement operations or if there is an emergency, 3) persons or vessels desiring to enter the safety zone may do so with permission from the

COTP or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners via marine channel 16 (VHF-FM).

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this proposed rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves involves a temporary safety zone that will prohibit entry within a 50 yard radius from the center of the North Hero-Grand Isle Bridge during its removal and replacement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include

the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2018-0682 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

165 as follows:

**PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Amend §165.T01-0682 by revising paragraph (c) to read as follows:

§ 165.T01-0682 Safety Zone; North Hero-Grand Isle Bridge, Lake Champlain, VT.

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(c) *Effective and enforcement period.* This section is effective from September 2, 2022, through September 1, 2024, and subject to enforcement 24 hours a day. When enforced, as deemed necessary by the COTP, vessels and persons will be prohibited from entering the safety zone unless granted permission from the COTP or the COTP's designated representative.

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Dated: August 26, 2022.

A. E. Florentino,
Captain, U.S. Coast Guard,
Captain of the Port Northern New England

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